

City of Crossville

392 N. Main
Crossville, TN 38555



Minutes

Tuesday, June 25, 2013

6:00 PM

Council Chambers

The City Council for the City of Crossville met in special session on Tuesday, June 26, 2013, at Crossville City Hall. Mayor J. H. Graham, III was present and presiding. He called the meeting to order at 6:00 p.m.

Roll Call: Present: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza, and Council Member Jesse Kerley. Others present were Interim City Manager Jack Miller, City Attorney Kenneth Chadwell, City Clerk Sally Oglesby, Darrell Sherrill, Harry Sabine, Darlene Barnwell, Fred Houston, Mitzi Evitt, Tom Evitt, Linda Baehr-Caldwell, Lewis Stover, Judy Stover, Stacey Kaige, Mary Beth Elrod, Sue York, Archie Higgins, Lena Higgins, Brenda Stone, Floyd Stone, Marcus Matthews, Karen Cole, John Turner, Skyler Hawn, Harold Allred, Kenneth Ferguson, Ed Camera, John Kinnunen, Judy Wojta, Tom Isham, Nancy Hyder, Vancienetta Wisdom, Shirley Rinks, Jim Young, Grant Finley, Jake Finley, Karli Threet, Jim Morrow, Sandra Gruber, Dorothy Meharg, Art Meharg, Aaron Elmore, Amanda Elmore, Eric Chamberlin, J.C. Cook, Charlie Cook, Ted Meadows, John Davis, Kensie Davis, Sarah Hazelton, Amanda Houston, Joe Miller, Don Napier, Sam Baisley, Angela Baisley, Terry Hassler, Ray Hansen, David Simcox, Jim Farris, Tim Begley, Chris Bennett, Khrista Wyatt, Jerry Lewis, Gloria Sue Lewis, Steve Hill, Jerry Kerley, Chris South, Pam Harris, Jerry Garrison, Bob Schwartz, Jim Purcell, Brian Piercy, Bill Oglesby, Joe Kerley, Jan McNeil, Clyde Winningham, Josh Haney, Janice Plemmons-Jackson, Danny Findley, Helen D. Camp, Bob Camp, Robert J. Mitchell, Greg Miles, Sharron Eckert, Tonya Hinch, Billy Loggins, Tony Perry, Johnny Presley, Randy Graham, and Joe Looney.

ITEM #1 – Consent Agenda

A motion was made by Mayor Pro-tem Danny Wyatt, seconded by Mayor J.H. Graham III, that items "a - n, except m" be approved on the Consent Agenda.

ORDINANCES ON THIRD READING

- a. Ordinance annexing 0.39 acres on Grandview Drive
- b. Ordinance annexing 1.33 acres on Hwy. 127N
- c. Ordinance amending the FY2012-13 budget for fireworks

ORDINANCES ON SECOND READING

- d. Ordinance amending the FY2012-13 budget for Kinder Garden
- e. Ordinance amending §15-302 to add Deer Creek speed limits
- f. Ordinance amending the FY2012-13 budget for taxiway
- g. Ordinance amending the FY2012-13 budget for cemetery road

ORDINANCES ON FIRST READING

- h. Ordinance amending FY2012-13 budget for year-end adjustments

OTHER CONSENT ITEMS

- i. Resolution approving a Plan of Services for Hwy. 127N (Dollar General) annexation
- j. Approval of promotion of Terry Potter to Fire Lieutenant
- k. Resolution approving a Plan of Services for the annexation of 0.39 acres on Grandview Drive
- l. Resolution approving 401A Pension Plan
- n. Approval of Three Star Grant

The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

- m. Approval of Asset Management Plan - Finance Director Fred Houston explained the asset plan and reserves.

A motion was made by Mayor J.H. Graham III, seconded by Council Member Pete Souza, that the asset management plan be approved as recommended. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

ITEM #2 – OTHER BUSINESS

- a. Adoption of FY2013-14 budget

The presented budget included a six cent tax increase and 4% across-the-board raise for all full time employees. Councilman Souza complimented the City Manager and department heads for their work on the budget. Mayor Pro-Tem Wyatt proposed a 3% raise for all employees and eliminating the tax increase. Councilman Marlow concurred with the Mayor Pro-Tem's recommendation. Councilman Kerley proposed eliminating the tax increase but to spread the 3% evenly among employees rather than across the board. This proposal was estimated to provide a raise of \$1,359 per employee.

A motion was made by Mayor Pro-Tem Danny Wyatt, seconded by Councilman Jesse Kerley, that the ordinance adopting a budget for FY2013-14 be adopted on third and final reading with an approved fund balance of \$283,165; no property tax increase, and a raise of \$1359 per employee. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

- b. Adoption of a Tax Rate for FY2013-14

A motion was made by Mayor J. H. Graham III, seconded by Councilman George Marlow, that the ordinance setting the tax rate at \$0.53 for FY2013-14 be adopted on third and final reading. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

- c. Matters relative to Co-Linx FIDP & Site Civil Project

Bids were received on June 13 on the CoLinx expansion project. The bids are divided into Schedule I and Schedule II. Schedule I covers the work to be performed under the FastTrack grant. Schedule II covers the work to be performed for CoLinx.

The City will be the owner of the contract. When pay requests are received, CoLinx will be notified and they will deposit their share of the costs in the City's bank account prior to the payment to the contractor. The City will, in turn, file the pay request with the State for reimbursement of the City's share through the grant.

Bids were received from 5 bidders. The low recommended bid was Plateau Excavation, Inc.

	Engineer's Estimate	Plateau Excavation
Schedule I	\$ 617,750	\$ 478,970.09
Schedule II	\$1,697,026	\$1,268,036.22
TOTAL	\$2,314,776	\$1,747,006.31

Because the bid came in substantially under the estimate, ECE Services is discussing with the Tennessee Department of Economic and Community Development (ECD) the possibility of shifting some of the items in Schedule II to Schedule I to take full advantage of the grant. Approval of the bid was not received from ECD prior to the meeting, so the award was contingent on their approval.

An engineering contract with ECE Services for the amount that was called out in the Preliminary Engineer Report for the FastTrack portion was presented. A budget amendment will be required to pay the engineering costs that have been incurred during this fiscal year.

A motion was made by Councilman Pete Souza, seconded by Councilman Jesse Kerley, that the bid of Plateau Excavation on the CoLinX project be approved, contingent on approval from ECD, a contract with ECE Services be approved, and a budget amendment passed on first reading. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

- d. Matters relative to bicycle rack
Veolia Water offered to donate a bicycle rack for City Hall.

A motion was made by Mayor J.H. Graham III, seconded by Mayor Pro-tem Danny Wyatt, that the donation of a bicycle rack from Veolia be gratefully accepted. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

- e. Matters relative to security gate for airport
Bids were received on June 18 for a security gate near the new corporate hangar. The low bid was from Security Fence in the amount of \$15,901.

A motion was made by Mayor J.H. Graham III, seconded by Council Member Pete Souza, that the bid of Security Fence on a security gate at the airport be approved as recommended. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley,

- f. Matters relative to City Manager selection process
The applications were distributed to Council on June 14 with each Councilmember requested to provide their top 4-5 applicants to Sandy Gruber for tabulation. The top candidates were provided on Friday. Councilman Souza suggested eliminating all that received only 1 vote and have Councilmembers re-vote on the remaining candidates by the end of the week. Mayor Pro-Tem Wyatt pointed out that there were 3 candidates with 3 votes that could be interviewed. If there wasn't any agreement on any of those, the interviews could be extended to those with 2 votes. Councilmen Kerley and Marlow agreed with Councilman Souza's plan. Councilman Marlow suggested that the City should make a commitment to the successful candidate who may be leaving a current job and possibly relocate their family. He suggested a 4 year contract and possibly a commitment of the City Manager to fulfill a designated time in the job. Councilman Souza requested the contract be for 3 years. The contract would be prepared by the City Attorney and available to the candidates prior to their interview. Background checks would be considered during the interview process.

A motion was made by Council Member George Marlow, seconded by Council Member Pete Souza, that a three year contract be offered to the selected City Manager. The motion carried by the following vote: Aye: 3 - Council Member George Marlow, Council Member Pete Souza and Council Member Jesse Kerley; Nay: 2 - Mayor Pro-tem Danny Wyatt and Mayor J.H. Graham III.

Councilman Souza suggested that each person vote for 3 people that received 2 or 3 votes during the first round. Mayor Pro-Tem Wyatt suggested having the vote in an open meeting if the candidates don't have a privacy concern. The top three and ties would be interviewed.

A motion was made by Council Member Pete Souza, seconded by Council Member Jesse Kerley, that Council members re-vote by Friday at 2:00 p.m. to Mrs. Gruber on all those who received two or 3 votes during the first round with each councilmember having three votes. The motion carried by the following vote: Aye: 3 - Council Member George Marlow, Council Member Pete Souza and Council Member Jesse Kerley; Nay: 2 - Mayor Pro-tem Danny Wyatt and Mayor J.H. Graham III.

g. Matters relative to Swallows property

A 145.3 acre tract has been offered for sale to the City to expand the industrial park on Maryetta Drive. This project is contiguous to the Public Works Complex and the industrial park on Maryetta Drive. The property is offered for \$11,111.10 per acre. Mayor Graham stated that he believes that the City has plenty of room right now. There was no interest expressed. Councilman Souza encouraged marketing the industrial property we have now and keep the property on the tax rolls. Mayor Pro-Tem Wyatt agreed with Councilman Souza.

h. Matters relative to report on economic/industrial development meeting

Mayor Graham led a discussion on economic development strategies discussed at a regional economic development meeting he and Billy Loggins attended in Cookeville with representatives of the Tennessee Dept. of Economic and Community Development, USDA Rural Development, Tennessee Valley Authority, and the Upper Cumberland Development District. Among the strategies discussed were industrial speculation buildings and their importance. He recommended making an application to TVA for spec building money. They have a .58 variable interest rate available. The labor force availability is also important and their training. He recommended meeting with TVA and making an application for spec building funding. The information recommended by TVA on a spec building would be brought back to the Council for consideration.

A motion was made by Mayor J.H. Graham III, seconded by Council Member George Marlow, that a meeting be held with TVA and an application be submitted for spec building funding. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

i. Matters relative to Crossville Circus

Councilman Kerley stated that Mayor Graham brought up a personnel issue that he felt was in violation of the Crossville Code. He also charged that Mayor Graham brought accusations against the Interim City Manager that had no merit and were a personnel issue. He questioned the motivation of the City Clerk for recording a staff meeting, why the other employees not notified they were being recorded, and who the only employee was that got out of hand in the meeting. He felt that this matter should be answered by the Personnel Board. Councilman Souza requested Sandy Gruber to explain the proper procedures for filing a grievance. She stated that it is available to any full-time city employee and reviewed the policy for grievances. She reported that no grievance had been filed. Councilman Souza commented that he felt there were 2 issues: (1) the incident was brought out in public with serious allegations and (2) how it was handled by public officials. He felt it would not be proper for him to make a comment on the issue and that it would be premature to make a judgment before the

Personnel Board makes a decision. Further, the Council meeting was not the proper forum to determine the merits of a complaint of this nature, but would be for final action. He considered it a serious ethics violation by the Mayor and that it should have been placed on the agenda with all councilmembers being privy to the information in advance. He said that the City Attorney should have addressed the Council and stated that the charter should be followed. Councilman Souza stated that he felt bringing up the matter amounted to the unethical use of authority by Mayor Graham and Mayor Pro-Tem Wyatt. Following his remarks concerning the staff meeting and the issues brought up in the earlier meeting, he asked that the agendas be followed as the rules of order. He brought up hostility issues within the Council and that he felt it was ethically wrong for the Mayor Pro-Tem to go to the City Clerk to draft the motion affecting her superior's duties. The matter has divided the Council and the City. Councilman Marlow stated that he is a strong supporter of the City Clerk and that she is an asset to the City. He felt that Dr. Miller's goal for the meetings on teamwork was good, but that he probably let the staff meeting get out of hand. Mayor Pro-Tem Wyatt responded to the allegations of Councilman Souza about the inappropriateness of the item coming up during the City Manager's Report. He pointed out that Councilman Kerley made the motion to fire Jack Miller during the City Manager's report in January 2008. He asked the City Attorney if he was out of line in making the motion during that report. The City Attorney responded that he was not out of line. Mayor Pro-Tem Wyatt continued that, after the accusations about the appropriateness of the City Clerk doing resolutions for him, he requested a copy of her job description. The City Clerk was asked to read the job description which was last revised in 1998. He continued that one of the accusations by the Interim City Manager towards the City Clerk was that he had seen her talking to the Mayor and Councilmembers in her office without his permission. He read Tennessee Code Annotated 8-50-602, which is the Public Employee Political Freedom Act of 1980 that specifically bans any prohibition of public employees from talking to elected public officials. He stated that the accusations in the staff meeting were against T.C.A. and specifically the City Clerk's job description. He agreed with a previous comment by Councilman Souza that this council is deteriorating, but that they were elected to represent the citizens. Councilman Kerley stated that he believe the employee handbook specifically says that employees are not supposed to address Council and that it appeared the T.C.A. went against Charter. He also asked who the City Manager was when the job description was written in 1998. Councilman Souza pointed out the City Manager runs the city not the Council and that it was inappropriate to have the City Clerk write a resolution against her boss. Mayor Pro-Tem Wyatt also brought up the accusation made to her about changing the minutes. The City Clerk provided a copy of a verbatim transcript of the disputed portion of the minutes.

Mayor Graham asked if it was proper for him to vote on the motion. The City Attorney clarified that it was proper for him to vote.

A motion was made by Council Member Pete Souza, seconded by Council Member Jesse Kerley, that the City hire an ethics lawyer to look into the role of Mayor Graham and Mayor Pro-Tem Wyatt and look into the allegations made at the council meeting held on June 11. The motion failed by the following vote: Aye: 2 - Council Member Pete Souza and Council Member Jesse Kerley; Nay: 2 - Council Member George Marlow and Mayor J.H. Graham III; Abstain: 1 - Mayor Pro-tem Danny Wyatt.

j. Matters relative to unethical use of authority by Mayor Graham and Mayor Pro-Tem Wyatt

Councilman Souza stated this was covered in the previous agenda item.

k. Matters relative to full-time attorney

Councilman Souza stated that he wanted to invoke the germane rule meaning that anything germane to the issue could be brought in the discussion. He described three 3 types of ethics---1) ethics which are the standards people are guided by to do their job; 2) ethics as what they can get away with; and 3) fiduciary responsibilities. He described fiduciary responsibilities as those ethics that make it improper for any violation or anything that even appears to be wrong. He considered this to be the highest standard of ethics and that the City Council and City Attorney are guided by that rule. Information provided to the Council should be appropriate and correct and not with

the intent to mislead anybody. He asked Assistant Chief Sherrill to pass out envelopes to Council and City Attorney with information regarding the purchase of the bank building. City Attorney Chadwell stated that he would provide copies of the information to the press. Councilman Souza asked the City Attorney if he would consider withdrawing from his services to the City. Mr. Chadwell responded that he would not. Councilman Souza asked Mr. Chadwell if he thought it was appropriate for him and his partner to make \$169,000 on the bank deal. Mr. Chadwell responded that they did not make \$169,000 on the bank deal. He explained to the Council that he and his partner formed Halstead Property Development LLC in 2004 to purchase some properties around town for private investment purposes. They bought the building under Halstead Property Development, LLC for future offices. Following the closing, Johnny Reeves and Jim Thompson approached them about buying the building. In 2005, they sold the LLC to Jim Thompson and Johnny Reeves and no longer had any ownership of the building after that time. Since that time, he and his partner have had no interest in the LLC or the building. When the city became interested in the building in 2011, all the paperwork they had on the building was turned over to the City Manager and anyone else interested in what they knew about the building. At the time the building was sold to the City, he had no interest in the building and had not had for a very long time. Mr. Chadwell further stated that he fully disclosed his previous ownership of the building to the Council when they started looking at the building.

Concerning the full-time attorney, Councilman Souza reviewed cost estimates prepared by the Finance Director with information from the City Clerk that estimated the cost to be about \$200,000/yr. He stated that he felt the city would be better off with a full-time attorney to do additional duties outside of major litigation. Mayor Pro-Tem Wyatt commented that he had looked at the numbers and had concerns himself, but that the billing process has improved and it provides more details. Over the last five years, it averaged less than \$100,000 per year outside of costs for some major projects. Councilman Kerley asked the City Manager to pull numbers from some cities of similar size. He believes that we are paying more than most. Councilman Marlow stated that Mr. Chadwell does a good job, that we are in the middle of several lawsuits and it would not be a good time to make a change, and that the City is probably not big enough at this time to have a full-time City Attorney. Mayor Graham expressed his agreement with Mayor Pro-Tem Wyatt and Councilman Marlow. Mayor Graham expressed concern about the job responsibilities and the diversity in a number of projects. The Finance Director was asked to look at year-end costs for legal fees. He estimated it about \$68,000, but would provide more accurate information.

A motion was made by Council Member Pete Souza, seconded by Council Member Jesse Kerley, to hire a full-time city attorney. The motion failed by the following vote: Aye: 2 - Council Member Pete Souza and Council Member Jesse Kerley; Nay: 3 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt and Mayor J.H. Graham III.

I. Matters relative to interim City Manager

Mayor Pro-Tem Wyatt brought up concerns from the audit of 2007-08. He asked that copies be provided to the Council and it be discussed at the work session to be held next Tuesday at 2:00 p.m.

A motion was made by Council Member Jesse Kerley, seconded by Council Member Pete Souza, that the meeting be adjourned. The motion carried by the following vote: Aye: 5 - Council Member George Marlow, Mayor Pro-tem Danny Wyatt, Mayor J.H. Graham III, Council Member Pete Souza and Council Member Jesse Kerley.

With no further business, the meeting was adjourned at 7:39 p.m.